

Message Text

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C O N F I D E N T I A L BUENOS AIRES 4632

E.O. 11652: GDS
TAGS: SHUM, AR
SUBJECT: HUMAN RIGHTS (ARGENTINA JUDICIAL SYSTEM)

SUMMARY: THE ARGENTINE SUPREME COURT (FEDERAL) RULED RECENTLY THAT FEDERAL COURTS OF FIRST INSTANCE (DISTRICT COURTS) SPECIALIZING IN CRIMINAL MATTERS HAVE THE RIGHT AND DUTY TO CHECK INTO AND CONTROL HUMANE CONDITIONS IN PRISONS, AS WELL AS THE WELFARE OF PRISONERS, EVEN THOSE HELD UNDER THE PEN (PODER EJECUTIVE NACIONAL).

1. FOR THE MOMENT, IT APPEARS THAT MY DISCUSSIONS WITH MEMBERS OF PROVINCIAL SUPREME COURTS AND THE ARGENTINE SUPREME COURT (FEDERAL) MAY BE BEARING SOME FRUIT. I HAVE HAD SESSIONS WITH AT LEAST EIGHT PROVINCIAL SUPREME COURT JUDGES AND AT LEAST THREE TALKS WITH FEDERAL SUPREME COURT JUDGES ON THE NEED TO GRANT SOME TYPE OF LEGAL REMEDY TO THOSE PRISONERS SERVING UNDER THE PEN (PODER EJECUTIVO NACIONAL). FOR THE MOST PART, JUDGES TOOK THE POSTURE THAT ALL COURTS LACKED JURISDICTION OR EVEN THE POWER TO REVIEW ANY CASE FALLING IN THE PEN CATEGORY.

2. MY POINTED QUESTION TO THE JUDGES HAS BEEN HOW IS IT POSSIBLE FOR PRISONERS TO REMAIN WITHOUT EFFECTIVE LEGAL REMEDY SOLELY ON THE BASIS OF BEING PEN PRISONERS. I
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EXPLAIN THAT IN MY EXPERIENCE AS A FORMER SUPERIOR COURT JUDGE, DISTRICT ATTORNEY AND PRACTICING ATTORNEY, I JUST COULD NOT COMPREHEND THE LEGAL CONCEPT OF ENCARCERATION WITHOUT CHARGES OR WITHOUT ANY RESORT TO JUDICIAL PROCESS. I WOULD EMPHASIZE THAT SURELY ARGENTINA, A COUNTRY THAT HAS PRODUCED OUTSTANDING JURISTS, WOULD CERTAINLY BE EXPECTED, IN THE EYES OF THE WORLD, TO RESORT TO THE RULE OF LAW. THE

DEPRIVATION OF LEGAL RECOURSE TO PRISONERS,
UNDERMINES THE FRAMEWORK OF WHAT WAS ONCE AN EFFICIENT
AND SOUND JUDICIAL SYSTEM.

3. THE JUDGES AVOIDED FACING REALITY BY ENGAGING IN PHILOSOPHICAL DISCUSSIONS ON HABEAS CORPUS, LEY DE AMPARO AND CONSTITUTIONAL ISSUES. ALTHOUGH THE JUDGES WOULD HALF-WAY ADMIT THE INAPPLICABILITY OF THESE REMEDIES, THEY WOULD ALWAYS CONCLUDE BY SAYING THAT PEN WAS AN EXTRA-ORDINARY EXECUTIVE MEASURE AND WAS FULLY CONSTITUTIONAL. THE JUDGES STATED THEY WERE PRECLUDED FROM REVIEWING ANY EXECUTIVE ACT.

4. THE CHICKENS NOW COME HOME TO ROOST. RECENTLY, THE ARGENTINE FEDERAL SUPREME COURT RULED THAT WHEN A PETITION WAS FILED WITH A COURT, EVEN THOUGH IT MAY BE A PEN CASE, THE JUDGE HAD THE DUTY AND OBLIGATION TO INQUIRE INTO SANITARY CONDITIONS OF PRISONS, THE SAFETY AND WELFARE OF PRISONERS, AND CAUSES FOR ARREST. THE COURT WENT FURTHER, RULING THAT THE JUDGE HAD THE AUTHORITY TO SUMMON GOVERNMENT OFFICIALS TO ANSWER INTERROGATORIES SUBMITTED BY JUDGES.

5. THIS ACTION CAME ABOUT AFTER A PETITION WAS FILED IN FEDERAL DISTRICT COURT NO. 5 IN BUENOS AIRES CONCERNING A PEN CASE. THE DISTRICT JUDGE DISMISSED THE PETITION ALLEGING LACK OF JURISDICTION OVER PEN MATTERS. HE ORDERED THE CASE SUBMITTED TO AN
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ADMINISTRATIVE TRIBUNAL. BUT ON APPEAL TO THE SUPREME COURT, THE LOWER COURT WAS OVERRULED. BASING ITS DICTA ON ARTICLE 629 OF THE ARGENTINE CRIMINAL PROCEDURAL CODE (TITLE VI, VOLUME V), THE SUPREME COURT HELD THAT THE COURTS DO HAVE INHERENT JUDICIAL POWERS TO INVESTIGATE THOSE MATTER OF AN URGENT AND JUDICIAL NATURE. ONCE THE INHERENT POWERS OF THE LOW COURT HAD BEEN UTILIZED, THE COURT COULD MAKE AN ASSIGNMENT TO ANOTHER TRIBUNAL. BY THIS PROCESS JUSTICE COULD BE SERVED.

6. THE COURT'S FULING COINCIDED WITH ARTICLE 18 OF THE ARGENTINE CONSTITUTION, PROVIDING THAT "JAILS OF THE NATIONAL SHALL BE HUMANE AND CLEAN, FOR THE SAFETY OR PRISONERS AND NOT FOR THEIR PUNISHMENT. ALSO, THAT ANY MEASURE REQUIRED TO FULFILL THESE ENDS SHOULD BE THE RESPONSIBILITY OF AN AUTHORIZING JUDGE.

7. THE COURT ALSO MENTIONED ARTICLE 683 OF FEDERAL PROCEDURAL CRIMINAL CODE WHICH MADE JUDGES RESPONSIBLE FOR THE SAFETY, HEALTH AND WELFARE OF PRISONERS; THAT PRISONERS BE PROPERLY CARED FOR; THAT FOOD BE

PLENTIFUL AND WHOLESOME; TREATMENT OF PRISONERS MUST BE IN ACCORDANCE OF EXISTING REGULATIONS; ALSO PRISONERS MUST NOT BE SUBJECTED TO UNUSUAL AND CRUEL METHODS OF PUNISHMENT. REMITTING JUDGES 'JUECES DE INSTRUCCION) ARE AUTHORIZED TO VISIT PRISONS FOR THE PURPOSE OF SATISFYING THEMSELVES OF PRISON CONDITIONS AND LISTEN TO COMPLAINTS FROM PRISONERS.

8. COMMENT: AS IN MOST CIVILIZED COUNTRIES, A FEDERAL SUPREME COURT DECISION IS TANTAMOUNT TO BEING "THE LAW OF THE LAND". IT IS THE COURT OF LAST RESORT. ARGENTINA IS NO DIFFERENT IN ITS JUDICIAL STRUCTURE. WE ARE HOPEFUL THAT THIS DECISION WILL BE TAKEN TO HEART BY LOWER COURTS. THE RULING CERTAINLY OPENS THE CONFIDENTIAL

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DOOR FOR MORE HUMANE TREATMENT OF PRISONERS AS WELL AS A POSSIBLE RETURN TO RULE OF LAW. IT IS TOO EARLY TO JUMP TO OPTIMISTIC CONCLUSIONS, BUT THE SUPREME COURT DECISION IS A STEP IN THE RIGHT DIRECTION. CASTRO

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